acquired in 1925 from "the documentary evidence". He apparently accepted the evidence of the respondent that she was married to the deceased for forty years. It would be desirable if other evidence had been called to prove this fact, for example, her marriage certificate. Her identity card may give some indication as to her age from which an inference could be drawn as to the probability of what was alleged. Evidence of relatives and friends would have been helpful on this point. What is of importance is when the marriage was contracted. If it was after the alienation of the property to the deceased, it could not be *charian laki-bini* and may well support the appellant's claim that it is a *pembawa*. The collector having found that it was *charian laki-bini* decided that the respondent was entitled to the whole of the property. He based his decision on a statement in *Taylor's* Customary Law of Rembau, page 26:— "On the death of a man in wedlock the rule is *mati laki tinggal ka-bini*. Since he died 'in his wife's hands' she alone is responsible for his funeral and his *waris* can recover nothing but the *pembawa*". While this proposition may be true of Rembau, it does not follow that it is of general application. The *adat* may differ from state to state and from district to district. Indeed, in his Customary Law of Rembau, the author says that "the people of Rembau follow a matriarchal system . . . differing in some respects from the cognate customs practised in the neighbouring districts of Kuala Pilah and Naning." He goes on to say: "In the absence of any sufficient work of reference they (the collectors) were compelled in disputed cases to adopt the practice of calling expert witnesses, usually the tribal chiefs (*lembagas*), to give evidence of the custom". It is true that those experts might differ, but as the learned author said, "the collectors . . . had they gone more deeply into the matter would have found that many apparently conflicting statements can be reconciled".

In the present case, in my view, the collector erred in treating the custom of Rembau as applicable to Kuala Pilah. I would therefore allow the appeal and remit the case to the collector for it to be tried before another collector with the following directions, namely, (1) to find out if the property E 2006 is *charian laki-bini* or a *pembawa*. On this point, the evidence of the date of the marriage of the respondent to the deceased is important. In the absence of documentary evidence, other evidence bearing on the point should be considered; (2) once the category of the property is ascertained, to find out the *adat* in respect thereof, and for that purpose to require the attendance of persons such as the *lembagas* who may give evidence in the matter.

At the re-hearing, section 12(4) of the Small Estates (Distribution) Ordinance, 1955, and Part III in respect of the special provisions relating to Negri Sembilan should be borne in mind.

Finally, I may add that as counsel have been engaged in this appeal, and if their assistance is needed by the parties, they may be allowed to attend at the re-hearing. This is however subject to the consent of the collector who has exclusive jurisdiction in the matter.

Appeal allowed.
Case remitted for re-trial.

Solicitors: *R. Muthu-Ramalingam; Joseph & Son.*

PUBLIC PROSECUTOR v. LEE YOKE KAI

[A.Cr.J. (MacIntyre J.) January 3, 1967]

[Ipoh — Criminal Appeal No. 104 of 1965]

Gaming — Bookmaker — Proof that document is meant for betting — Evidence of police officer — Betting Ordinance, 1952, ss. 6(3)(a), 8(1) and 14A.

This was an appeal against the acquittal of the respondent on a charge of acting as a bookmaker, an offence under the Betting Ordinance, 1953. The learned magistrate acquitted the respondent at the end of the case for the prosecution. The public prosecutor appealed on the ground that the learned magistrate had erred in law and in fact in not calling for the defence.

Held: as the prosecution had in this case called evidence to prove that the document in question was related to bookmaking, the presumption under the Ordinance arose and the respondent should have been called upon for his defence.

Cases referred to:—

(1) *Tan Tuck Lock* v. *R.* [1953] M.L.J. 60.

(2) *Loh Teck Chong* v. *Public Prosecutor* [1966] 1 M.L.J. 7 at p. 8.

MAGISTRATE'S CRIMINAL APPEAL.

Abdul Hamid bin Omar (Legal Adviser, Perak) for the appellant.

Alexander Y. L. Lee for the respondent.

Cur. Adv. Vult.

MacIntyre J. The respondent was charged before the learned magistrate at Ipoh with having acted as a bookmaker at the Perak Turf Club Race Course on the 7th of June 1964, an offence punishable under section 6(3)(a) of the Betting Ordinance No. 47 of 1953. At the end of the case for the prosecution, the learned magistrate acquitted and discharged the respondent. Against that order, the public prosecutor now appeals on the grounds that the learned magistrate had erred in law and in fact in not calling for the defence.

The facts of the case are simple. The respondent was seen by two security officers between 3.15 p.m. and 5 p.m. during the Ipoh races on June 7, 1964, making certain entries with a pen on a Chinese newspaper from time to time on receipt of information or instruction whispered to him by 3 or 4 persons. At the end of the 6th

race, respondent was arrested and later handed over to a police sergeant at the Central Police Station together with the Chinese newspaper (Exh. P.1.), a pen (Exh. P.2) and a sum of $7.55 (Exh. P.3) in cash all of which were taken from his person. Subsequently, the police sergeant took possession of some tote tickets (Exh. P.5) from his pocket.

Expert evidence was given at the trial by Inspector Yeoh (P.W.6) on the significance of certain figures entered in ink on the race programme published in P.1. One set of entries indicated the identity of the horses that came first, second and third in each of the first five races and another, the dividends declared in each race. But in respect of races Nos. 3, 4 and 5 the entries also indicate the amount of money staked and the amount lost by the punter. Thus in respect of race 3, the entries indicate that the punter had bought 20 tickets for a win and 20 tickets for a place on horse No. 7 which came third paying a dividend of $6. Had the tickets been bought through the totaliser, the amount staked would have amounted to $200 and the net loss suffered by the punter, after deducting the gain of $120 on the place bet, would have been $80. But the entries show that the loss sustained was only $56 being the difference between $176 and $120. According to Inspector Yeoh bookmakers give a rebate on the amount staked and in this instance the rebate was 60 cents on every $5, which would account for $176 being shown as the actual amount staked. The loss of $264 in race 4 and in race 5, respectively, is also reckoned on the same basis.

Mr. Alexander Lee for the respondent submitted that the question of a rebate of 60 cents in every $5 staked being only an inference drawn by P.W.6 from the entries in P1, it could also be argued with equal logic that the sums of $176, $264 and $264 entered on the race programme in P1 against races 3, 4 and 5 respectively represented the actual amount staked by the respondent as a punter in partnership with other punters. This argument, if the betting was done through the totaliser, postulates that in race 3, out of the 20 win and 20 place tickets the respondent held the full interest in 17 win and 17 place tickets plus a 3/5th interest in one win and one place ticket, respectively, while his friends shared the remaining 2 win and 2 place tickets and a 2/5th interest in one win and one place ticket, respectively. The same curious situation would arise in respect of races 4 and 5. The possibility that the betting was conducted in this absurd fashion is so remote that it could be safely ignored. In the alternative it was argued that the respondent might have placed his bets with a bookie in which case he would be a punter and could not therefore be caught by the provisions of section 6(3)(a) of the Betting Ordinance. Now, if the bets had been placed with a bookie, then P1 would be a document which relates or appears to relate to the business of a bookmaker. Section 8(1) of the Betting Ordinance reads as follows:—

> "Any person accepting or receiving bets, stakes or wagers, or found in possession of any books, accounts, documents, telegrams, writings, circulars, cards or other articles which are used or appear to have been used or intended to be used in connection with or which relate or appear to relate to the business of a bookmaker shall be presumed until the contrary is proved to be acting as a bookmaker."

In view of the presumption under this section it would be for the respondent to prove that he did not act as a bookmaker but only as a punter, in which case he would expose himself to prosecution under section 6(1) of the Ordinance.

Learned counsel further submitted that on the evidence adduced, the learned magistrate was right in not calling for the defence in view of the decision in *Tan Tuck Lock* v. *R.*[1] where the facts according to him, were similar to the facts in the instant case. I am unable to say that the facts are similar by reading the report of the case. On what facts the expert witness in that case based his opinion are not stated. According to the judgment of Gordon-Smith Ag.C.J., "there was no evidence of any person placing any bets with the accused or any money passing or of any person communicating with No. 1 accused, except No. 2 accused." In the instant case 3 or 4 persons were seen communicating to the respondent whereupon the respondent made certain entries in P1. Apart from the facts, the accused persons in that case were charged under the Singapore Betting Ordinance the provisions of which then were similar to our Betting Ordinance before the amendments introducing sections 14A and 8(1) were enacted.

On behalf of the public prosecutor, it was urged that since P1 was a document which appeared to, apart from whether it actually did or did not, relate to the business of a bookmaker, the evidence, in view of the provisions of sections 8(1) and 14A of the Betting Ordinance, was sufficient in law for the learned magistrate to have called for the defence.

Section 14A reads as follows:—

> "In all proceedings under this Ordinance any evidence given by a police officer not below the rank of sergeant that any book, account, document, telegram, writing, circular, card or other articles produced before the court had been used or intended to be used for betting or wagering shall, until the contrary is proved, be deemed to be sufficient evidence of the fact."

It may appear from the wording of this section that the intention of the legislature was to deprive the court of its discretionary power to reject the evidence of any police officer not below the rank of a sergeant if he testified that the document before the court had been used or was intended to be used for betting or wagering. This possible interpretation appears to have

provoked the consternation of Ong Hock Thye F.J. in *Loh Teck Chong* v. *Public Prosecutor*,[2] when he said in the course of his judgment:—

"Baldly stated, it dispenses completely with the need for expert evidence, so that, in effect, any policeman, however unversed in the ways of the bookmaker, or in any form of betting whatsoever, becomes qualified to testify in the capacity of expert on a subject in which he may be an absolute *ignoramus*, and his opinion, a simple *ipse dixit*, then suffices to raise a presumption of guilt until the contrary is proved by the helpless suspect. To say that I am astounded by this piece of legislation is to put it mildly. Parliament, it was said, can do anything except make a man a woman or a woman a man. The Act of 1961 must, I think, be an egregious instance of omnipotence, when the bray of an ass can be metamorphosed into the voice of the expert — the only limitation being that the policeman should have attained a certain rank, however he did it, including, of course, climbing up by the ageing process."

However, what in effect this section says is that 'evidence' given by a police officer touching the matter in question shall be deemed sufficient evidence of the fact. The section does not say that anything short of 'evidence' is sufficient evidence of the fact. It would, therefore, follow that if a police officer while purporting to give expert evidence bases his opinion on a hunch or intuition or where his opinion is unsupported by reason, the court is not debarred from rejecting that opinion as not being evidence within the meaning of that word under the provisions of the Evidence Ordinance.

In *Loh Teck Chong* v. *Public Prosecutor*, *supra*, where the appellant was charged under the same section of the Betting Ordinance as the respondent in this case, the learned magistrate had convicted him despite the evidence of the police expert who had frankly admitted that it was impossible for him to say that the marks on the racing programme related to bookmaking. It was because of that that Ong Hock Thye F.J. when allowing the appeal remarked that the appellant should have been acquitted at the close of the case for the prosecution. In the instant case the expert made no such admission.

The learned magistrate appears to have misdirected his mind on the facts and on the law. Just because there was a discrepancy in the evidence as to whether P5 was recovered from the respondent by P.W.1 or P.W.5 — a discrepancy which was later cleared up by the evidence — he came to the conclusion that the whole of the case for the prosecution was fabricated. This conclusion, in my opinion, is wholly unwarranted by the evidence. He further held that P.W.6 did not give any reason for his opinion why P1 was a record of stakes and horses. The entries are self-explanatory and requires no expert to say that they are a record of stakes and horses. What perhaps, the learned magistrate had in mind was that P.W.6 gave no reason why the entries in P1 related or appeared to relate to the business of a bookmaker. But P.W.6 did give his reason, namely, that only bookmakers gave a rebate on the amount staked and that it could be reasonably inferred from the entries in P1 that a rebate was given. The learned magistrate seems to have overlooked the relevant provisions of the Betting Ordinance which render it unnecessary for the prosecution, in order to establish a *prima facie* case, to prove anything more than that the document in question appeared to relate to bookmaking.

There must be a new trial in this case. The order of the learned magistrate acquitting the respondent is set aside and the case remitted to the court below for hearing before another magistrate.

New trial ordered.

Solicitors: *Skrine & Co.*

LEE YEW SENG & ORS. v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Ong Hock Thye F.J.) January 6, 1967]

[K.L. — Federal Court Criminal Appeal No. X.27 of 1966]

Evidence — Confession made by a person while in police custody — Inadmissibility of — Ample evidence independent of confession to justify conviction — Courts of Judicature Act, 1964, s. 71(2) — Evidence Ordinance, 1950, ss. 26 & 167.

The appellants were charged with robbing a goldsmith's shop. There was ample evidence at the trial to show that the appellants took active part in the robbery but at the trial a confession made by the first appellant while he was in the custody of the police was admitted in evidence. The appellants were convicted and they appealed.

Held: the confession was inadmissible and ought to have been excluded but as there was in this case ample evidence, independently of the confession, to justify the conviction, the improper admission of the evidence did not warrant an order for a new trial or a reversal of the decision of the trial judge.

FEDERAL COURT.

V. Jeyaratnam for the 1st appellant.

D. R. Seenivasagam for the 2nd & 3rd appellants.

Syed Agil Barakbah (Deputy Public Prosecutor) for the respondent.

Ong Hock Thye F.J.: These appellants were convicted in the High Court at Ipoh of robbing a goldsmith's shop in Kuala Kangsar of a considerable quantity of jewellery and cash and, for the aggravated offence committed during the night hours, were each sentenced to seven years imprisonment under section 392 of the Penal Code. Their appeals against conviction were dismissed for the reasons which we now state in detail.

One common ground in all three appeals was